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June 11, 1999

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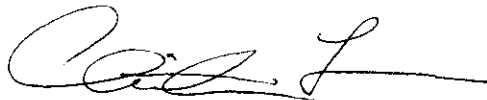
Re: Courtesy Submission of Original Signed Copy of Reply Comments in the
Matter of Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to the FCC's Second Further Notice of Proposed Rule Making released on April 16, 1999, and the pursuing Erratum released on May 26, 1999 (DA 99-1007), we electronically filed the Reply Comments of Pilgrim Telephone, Inc. in this proceeding.

Attached please find a copy of the ECFS Comment Submission Confirmation sheet with confirmation number 1999610924899, along with the original signed copy of the Reply Comments for your records.

Very truly yours,



Christiane Lourenco
Legal Assistant

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**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
Pilgrim Telephone, Inc.
...and Thank You for Your Comments**

Your Confirmation Number is: 1999610924899		
Date Received: Jun 10 1999		
Docket: 96-98		
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updated 03/25/98

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Local)	Second Further Notice
Competition Provisions of the)	of Proposed Rule Making
Telecommunications Act of 1996)	CC Docket No. 96-98

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

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Dated: June 10, 1999

Executive Summary

The rule making proceedings implementing the 1996 Telecommunications Act have been close to an Rorschach test: each party will see something different based upon its interests. Pilgrim is interested in competing in the telecommunications industry and wants to serve customers across the country. This second opportunity to establish Unbundled Network Elements ("UNEs") presents to the Commission an opportunity to increase consumer welfare by promoting competition. Competition will be promoted by preservation of the existing national list of UNEs and adding billing and collection services, customer call blocking database information, and real-time billed name and address to that national list.

It is clear that Congress, the FCC and the Supreme Court envisioned non-facilities-based competition in the communications industry. Non-facilities-based competition is possible, however, only when the incumbent local exchange carriers ("LEC") open the elements of their embedded networks to competitors. It is clear, from incumbent LECs' comments that they will not open their networks sufficiently unless compelled to do so. Pilgrim asks that the Commission include billing and collection services, customer call blocking database information, and real-time billed name and address as UNEs, so that no incumbent LEC may deny these services for competitors providing reverse or other billing to LEC customers.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Implementation of the Local)	Second Further Notice
Competition Provisions of the)	of Proposed Rule Making
Telecommunications Act of 1996)	CC Docket No. 96-98

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

Pilgrim Telephone, Inc. ("Pilgrim"), by its attorneys, files these reply comments in the above captioned proceeding.

I. Policies and Rules Should be Consistent with the Statute and Marketplace

The policies and rules implementing Section 252(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(d)(2), and the network elements which will be deemed Unbundled Network Elements ("UNEs"), need to reflect the purpose of the Act and the realities of competition in current communications and information services delivery markets and allow for the growth and viability of competitive carriers. The policies, rules and UNEs specified should reflect the *quid pro quo* established by Congress which balanced Bell Operating Company ("BOC") requests for relief from the restrictions of the Modified Final Judgment ("MFJ") with stringent requirements that the BOCs provide unbundled network elements.

The rules policies and UNEs also should reflect market forces and technological developments. Some UNEs, particularly facilities like dark fiber and T-1s, will continue to be deployed by a variety of companies. Over time these will become widely available and competitively priced enough to justify removing them from any list of UNEs.

Other items may never become available, however, due to technological or other physical or technological restraints. Examples of items which may always be UNEs are items which uniquely are in the possession of the local exchange carrier serving end user, such as billing and call routing preferences, billed name and address ("BNA") and billing and collections services. Examples of billing and call routing preferences include collect and third party blocking information (currently made widely available in line information database ("LIDB")), calling card validation (only available for joint use calling cards, and useful only when the company accepting the card has a billing and collection contract with the carrier issuing the card), and international and 900 number blocking information. The latter category, international and 900 number blocking information, is never provided by the incumbent local exchange carriers ("LECs"), and the information is jealously guarded by the LECs.

The Act orders that jealously guarded network elements be made available. The incumbent LECs argue that opening their networks will be extremely burdensome. The requirements contained in the Act are not as burdensome, difficult or unusual as the incumbent LECs would lead the Commission to believe. Making elements of communications systems widely available for resale at fair and non-discriminatory prices has been a hallmark of Commission policy to promote fully competitive communications markets. In a number of prior proceedings, including the Private Line Resale and MTS and OCP Guidelines Orders, the

Commission set forth clear instructions and guidelines regarding availability and pricing of facilities and resources for resale.

Pilgrim believes that the fact that no party argued against the provision of billing and collection, real time BNA or blocking information in the Comments simply demonstrates the fundamental nature of these services and information as UNEs. The incumbent LECs themselves, in marketing materials, actively promote the advantages of being on the incumbent LEC bill page and the benefits of consolidated billing. Pilgrim will supply sample marketing materials under separate cover.

II. The FCC Should Adopt A National List Of Required Unbundled Network Elements

Pilgrim supports the adoption of a national list of minimum required unbundled network elements ("UNEs"). A national list will ensure competition continues to increase across the country and will reduce unnecessary state-by-state litigation. A national list of required UNEs also recognizes the market reality that, in most geographic areas, there are no feasible alternative sources for the network elements necessary to compete with the incumbent LECs. In addition, certain elements, including billing and collection, blocking databases and real-time access to BNA databases, are either not available from any other source, or so limited as to not be useful. As a result, those elements must be included in any national UNE list.

In *AT&T v. Iowa Utilities Board*, the Supreme Court required the FCC to examine the availability of alternate sources for various network elements. Contrary to the incumbent LEC's assertions, that requirement does not lead to the conclusion that national UNE requirements are inappropriate. At this early stage of competition, many network elements are available from only

one incumbent LEC. Starting with a national list will surely sponsor competition consistent with the intent of the Act.

A national list of UNEs will sponsor competition, generally. State requirements will target unique characteristics of each region. State commissions should be authorized to require incumbent LECs to unbundle additional elements in that state as market conditions and technological developments warrant. To fully realize the important benefits of a national standard, however, Pilgrim recommends that states not be authorized to remove elements from the national list of UNEs absent a compelling showing.

III. The Existence Of Facilities-Based Competition Is Not Sufficient Grounds For Rejecting Unbundling Requirements

Neither the clear text of the Telecommunications Act of 1996 nor the Supreme Court's ruling in *Iowa Utilities Board* requires that competitors be facilities-based to receive the benefits conferred by the Act. In fact, Congress specifically contemplated resale as an initial form of competition. Allowing for a reseller market, at least in the initial stages of competition, makes sense because it allows competitors to enter the market and build the customer base necessary to support facilities-based competition in the future. Contrary to the arguments of the incumbent LECs, reselling is not a disincentive to facilities based competition, but a necessary step on the path to offer such competition or alternative.

Unbundling standards that look at the investment required to self-provide or at the existence of self-providing competitive LECs ignore the Congressionally-recognized importance of reselling as a competitive alternative. Consequently, the Commission should not begin its analysis of whether a network element is available from other sources by second-guessing a CLEC Reseller's decision to compete by resale.

In the past, the FCC has recognized the importance of non-facilities-based competition. In numerous decisions, including *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, Report and Order, 60 FCC 2d 261 (1976), the Commission has encouraged the expansion of the resale market. The FCC should extend that policy goal, which is strongly supported by both the relevant legislation and judicial precedent, to its unbundling requirements. Under such a policy umbrella, all network elements necessary for a provider to compete as a reseller must be unbundled.

The fact that a competitive LEC has acquired a network element through self-provisioning is not conclusive evidence that the network element is available from alternative sources and so need not be unbundled. The Act requires only incumbent LECs to unbundle and make available network elements. A CLEC may construct facilities but keep all of the capacity for its own use. Any determination that facilities are available from an alternate source must consider whether the alternate source has a statutory obligation to make the network element available to competitive carriers. The mere presence of one, or even several, competitive LECs with self-provided elements should not shield an incumbent LEC from unbundling requirements.

IV. Incumbent LECs Billing And Collection, Blocking Databases And Access To Real-Time Billed Name And Address Databases Cannot Be Replicated And Must Be Unbundled On A National Basis

A. These elements are necessary to provide casual calling services

In order to provide competitive causal calling services, companies like Pilgrim need access to the incumbent LEC's billing and collection, blocking databases and real-time access to its BNA database. If these elements are not unbundled, a wide variety of companies will be limited in their ability to effectively enter the market and competition will be impaired. *See,*

generally, Teltrust Comment; Focal Communications Comment; NorthPoint Communications Comment; Waller Creek Comment).

In order to offer a casual calling service like collect calling, a company must have up-to-date information on customers. Access to this information greatly reduces errors and lowers costs. In addition, lower service quality due to avoidable errors frustrates customers, leaving competitors that do not have access to the incumbent LEC's databases impaired in their ability to retain customers. Billing and collection is clearly critical to any business. A company simply cannot stay in business without an efficient, cost-effective way to bill and collect fees for its services. In order to maintain its customers, a competitor must be able to provide its customers with the simple billing methods presently offered by the incumbent LECs. When customers experience problems or inconvenience from a new company, they will quickly return to using the services of the company who provides the easiest payment method—the incumbent LEC. (Focal Communications Comment, at 8).

B. These elements cannot be replicated by competitive LECs

There are some incumbent LEC elements that simply cannot be replicated by a competitive LEC. Billing and collection, blocking databases and real-time BNA clearly fall into that category and should be unbundled under any §251 standard.

The incumbent LECs argue that all of the components necessary for providing these databases are available in the marketplace. They focus on the availability of computer hardware and software, and the initial data needed to create these databases. What the incumbent LECs neglect to address is their own unique access to up-to-date, complete information. Neither competitive providers nor self-provisioning can match the breadth and accuracy of the data

maintained by the incumbent LECs. (Metro One Telecommunications Comment, at 3; Teltrust Comment, at 12.) The disparity is so great as to substantially impair competition.

Billing and collection services present extraordinarily high hurdles to any competitor who cannot purchase these unbundled elements from the incumbent. During the past decade, AT&T has attempted to launch its own billing and collection service. *See, e.g., AT&T Communications*, Transmitted Nos. 1063 and 1064, CC Docket No. 87-611, Memorandum Opinion and Order, FCC Rcd. 5693 (1990), and press release at Attachment A. After investing at least \$162 million, the company has still not been successful in implementing an independent billing platform and still relies on the only viable source for much of its billing -- the incumbent LEC. If one of the largest telecommunications companies in the world cannot duplicate the incumbent LECs' billing and collection apparatus, there is clearly a need to unbundle that element on a nationwide basis.

V. Even Under The Standards Proposed By The Incumbent LECs, Billing And Collection, Blocking Databases And Access To Real-Time Billed Name And Address Databases Should Be Unbundled

The incumbent LECs have offered a series of high standards for requiring unbundling of various elements. Even under these standards, billing and collection, blocking databases and real-time BNA must be unbundled.

For example, many of the incumbent LECs call on the FCC to consider whether an "efficient competitor" could compete through self-provision or by purchasing the element from an alternate source. When AT&T decided to launch its own billing and collection service and failed, it made two things clear. First, there were no sufficient alternatives in the marketplace that could match the incumbent LECs services. Second, even a telecom giant like AT&T, surely

an efficient competitor under any standard, cannot replicate those systems, despite access to a huge amount of capital and decades of telecommunications experience and expertise then it is unlikely any competitor can replicate those systems.

In its comments, GTE calls on the FCC to require unbundling under the impair standard “only when the element is essential to competition and there is convincing evidence that CLECs cannot effectively compete using substitutes for the elements available.” (GTE Comment, at 5) As noted above, billing and collection, blocking databases and real-time BNA are absolutely essential to competition. Without access to these elements, competitors will not be able to offer services comparable to the incumbents. Further, these elements and the broader array of operations support systems (“OSS”) are required to provide virtually any other competitive telecommunications service. A local reseller, for example, cannot offer quality service without accurate customer information and blocking preferences.

These three elements also meet the second prong of the GTE test. There are no effective substitutes to the billing and collection, blocking databases and BNA databases of the incumbent LECs. As noted above, while the technology is available to replicate some of the functions of these databases, the quality of the resulting information is substantially below that of the incumbent LECs’ databases.

Similarly, US West argues that an element only meets the necessary standard if “(1) a functional substitute is unavailable from non-incumbent LEC sources or is available from sources only at prices or on terms that would preclude meaningful opportunities for competitive entry by a reasonably efficient competitor, and (2) it is effectively impossible to provide telecommunications service without access to that element or a functional substitute from some other source.” (U.S. West Comment, at 36).

As noted above, these elements are prerequisites to offering service and there are no “functional substitutes” outside of the incumbent LEC network. These elements meet even US West’s proposed necessary standard for unbundling proprietary elements, despite the fact that none of them fit into any definition of proprietary, including those offered by the incumbent LECs.

VI. Prior Commission Orders And Statements Support The Finding Of Billing And Collection Service As A UNE

It is interesting to note that in the AT&T Transmittal 1063 and 1064 series of orders, the Commission seems to have determined that it was imprudent for AT&T to invest in development of its own independent billing and collection system, and that AT&T should rely on LEC billing and collection. In discussing AT&T’s expenditures on a billing and collection system, the Commission noted that the cost of building an independent billing and collection system “so far exceeded the cost of other available alternatives that it might be unreasonable to allow expenses of this magnitude.” *AT&T Communications*, Transmittal Nos. 1063 and 1064, CC Docket No. 87-611, Memorandum Opinion and Order, 3 FCC Rcd 6409, 6410 (1988).

The costs and difficulties of building a billing and collection system independent of the LECs is no less difficult and costly today than it was in 1988. As even AT&T has not been successful in building an independent billing and collection system, it is unreasonable for the Commission to expect new market entrants to be able to undertake that task. In light of the Commission's statements regarding the prudence of investment in such a system, it may well expose a new market entrant to shareholder liability exposure to attempt to attempt to build an independent system now.

Inclusion of billing and collection on a list of UNEs will not lead to a retariffing of billing and collection. There is a substantial difference between requiring an element to be provided on a non-discriminatory basis as part of Sections 251(d)(2), and the rate regulation of a service. The Commission can make billing and collection a UNE without otherwise implicating the detariffing of billing and collection that it undertook in 1986.

Several factors demonstrate that access to billing and collection is necessary for competitors, and that failure to obtain billing and collection will impair an entrant's ability to compete, under any standard. The factors include, but are not limited to, the Commission's own findings with regard to AT&T's investments in Transmittal Nos. 1063 and 1064; the inability of AT&T itself to successfully build an independent system, and the failure of the casual calling and calling card markets that would ensue if LEC billing and collection were to become universally unavailable, as discussed in Pilgrim's Comments. Accordingly, the FCC should find that billing and collection is a UNE, and include it on any national list adopted by it.

VII. Allocation Of The Burden Of Proof

In the Second FNPRM, the FCC sought input on allocating the burden of proving whether a network element should be unbundled. The FCC proposed placing the burden of proof on the party with the best information and easiest access to the facts that should be considered in the creation of UNEs. Congress intended for the Act to enhance competition in the telecommunications industry, with incumbent LEC provisioning of UNEs to CLECs being one of the primary methods. There should be a general analytical approach that favors unbundling because that is the most effective way to broaden competition and provide new, advanced, and less expensive services to customers.

The incumbent LECs and USTA seized upon the Supreme Court's admonition to consider the availability of elements from outside the incumbent LEC's network and turned that into the predominant inquiry when a CLEC requests a UNE. The approach proposed by the incumbent LECs turns the Act's goal upside down by requiring CLECs to look outside the incumbent LEC network for alternative sourcing or opportunities for self-provisioning. The proper inquiry for unbundling is whether the requested element is necessary for providing telecommunications service, or if failure to acquire the element would materially impair the CLEC.

The incumbent LECs possess the best information to resolve this inquiry. The incumbent LECs have provided telecommunications services for decades. During that time, the incumbent LECs have attained the highest level of knowledge about the most intricate details of a telecommunications network and what is required for providing different kinds of services to different kinds of customers. That is the best information for deciding whether an element should be unbundled.

If the burden of proof were on the CLEC in an unbundling proceeding, the CLEC would be in the untenable position of having to prove a negative. The CLEC would have to prove there was no alternative outside of the incumbent LEC network. While alternatives should be considered, the mere existence of an alternative does not mean an element should not be unbundled. The mere existence of an alternative, alone, means nothing. If the alternative were a perfect substitute for the network element and there was no material difference in price, then the CLEC would likely access the element from the alternative source.

In order to defeat the presumption in favor of unbundling a network element, the incumbent LEC should have to prove more than just an alternative source of the element for the

CLEC. The incumbent LEC also has to prove that the CLEC will not experience impairment without the incumbent LEC element. According to The Telecommunications Association (“UTC”), the incumbent LEC should bear the burden of proving that any increase in cost or reduction in quality does not create a barrier to entry. (UTC Comment, at 5). A CLEC can present proof contradicting the incumbent LEC’s evidence of no impairment by showing that based upon delay in provisioning, difficulty of transport, or higher cost, the CLEC would be impaired without access to the element from the incumbent LEC.

This proof scheme furthers the Act’s goals of increasing competition and services by requiring incumbent LECs to prove a listed UNE should not be provided to a CLEC. The incumbent LEC must present proof on the minimum factors contained in Section 251 to show that an element should not be unbundled for a requesting carrier in order to defeat the presumption that UNEs should be provided to CLECs.

VIII. Periodic Review of UNEs

In response to the FCC’s request for comment on sunset provisions for the UNE list, parties submitted suggestions based on set time periods, usually two years, or the existence of certain conditions in a specific market. An automatic sunset based on the passage of time is arbitrary and could result in unfairness to new entrants based on changing circumstances or incumbent LEC intransigence. Sunsets based on the occurrence of market conditions would create an unnecessary administrative burden, and would make different UNEs available in different markets. A patchwork UNE system materially impairs nationwide service providers like Pilgrim.

The FCC's rules already provide for biennial review of the UNE list. During that review, the FCC can determine whether a UNE should be removed from the list. This process works more fairly and will potentially allow more new entrants to provide telecommunications services with UNEs than automatic

IX. Serving The Customer With Additional UNEs

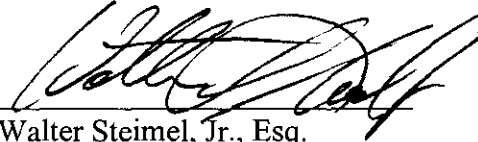
The incumbent LECs have spent a great deal of time arguing that the Act, and the UNE rules, are supposed to benefit customers. Pilgrim would never dispute that proposition. Pilgrim believes the expansion of the UNE list to include billing and collection, blocking information, and real-time BNA, will benefit customers across the nation. With access to a customers' blocking preferences, Pilgrim can avoid charging customers for calls they do not wish to receive. With real-time BNA, Pilgrim can process call information quickly and accurately. This provides certainty of charges for customers and reduces the costs of bills sent to improper addresses. When a customer can receive all of his charges for telephone use on one bill, he benefits from that simplicity. When a company does not have to replicate the billing and collection infrastructure of an incumbent LEC, that company can focus its resources on providing better, less expensive services. In any event, the Commission has recognized that competition itself benefits consumer and increases consumer welfare. All of these items, which Pilgrim proposes should be added to the UNE list, meet the Act's goals of increasing consumer welfare.

X. Conclusion

In order to continue to give effect to the 1996 Telecommunications Act by opening the telecommunications industry to competition and providing more choices to consumers, the FCC must continue to allow competitors to have access to the network elements of the incumbent

LECs. Pilgrim proposes the addition of billing and collection, blocking database information, and real-time billed name and address to the list of elements the incumbents should provide on an unbundled basis. The incumbents have control over these elements, and competitors cannot replicate or acquire them from an alternative source. The Act, and the FCC's rules, are meant to allow competitors access to the incumbent's facilities in order to serve the customer and effectively compete in the market.

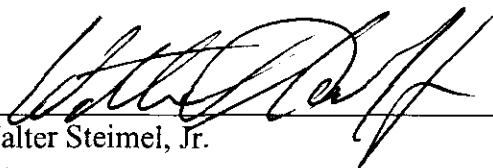
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Walter Steimel, Jr.', written over a horizontal line.

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Marjorie K. Conner, Esq.
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CERTIFICATE OF SERVICE

I, Walt Steimel, Jr., an attorney with the law firm of Hunton & Williams, hereby certify that on June 10, 1999, the foregoing REPLY COMMENTS OF PILGRIM TELEPHONE was served upon the Federal Communications Commission by hand delivery.



Walter Steimel, Jr.
Attorney

ATTACHMENT A

The Wall Street Journal
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Monday, May 5, 1997

Who's News

AT&T Names Ianna to Succeed Ponder In Creating Nationwide Billing System

By John J. Keller
Staff Reporter of The Wall Street Journal

NEW YORK -- AT&T Corp. reassigned the executive who supervised its much-criticized effort to build a new nationwide billing system, and handed his job to a deputy who currently oversees the vast AT&T communications network.

Ron Ponder, AT&T's executive vice president and chief information officer, had come under fire inside the company for AT&T's problems with the billing system. His reassignment was announced Friday in an e-mail to employees and confirmed by a company spokesman. People at the company said the move was ordered by AT&T President John R. Walter early last week.

Mr. Ponder, 54 years old, will now be in charge of creating a "blueprint" for making AT&T's global network and computer operations compatible with other partners' networks, AT&T said. Mr. Ponder couldn't be reached for comment.

Named to succeed Mr. Ponder was Frank Ianna, 48, a vice president and deputy, who was elevated to executive vice president. Mr. Ianna will now command a work force of some 35,000 employees and oversee not only the AT&T network but also all of its computer operations and the construction of the new billing system.

A new, more sophisticated billing system is crucial for AT&T to step up its marketing of local, long-distance, wireless and Internet services to its 90 million customers. The new system has taken more than four years to

construct so far -- nearly two years under Mr. Ponder's guidance -- and it still isn't working at full power in most of the country. Without it, AT&T can't bundle all of its services into one simple bill each month.

This has hampered AT&T's ability to expand sales beyond its core long-distance business. As AT&T's chief operating officer, Mr. Walter knows he must turn around this situation before the Bell companies and other competitors meet AT&T head-on within the next year in all markets. In some markets, another phone giant, GTE Corp., has already begun to offer a single bill for all of its services.

AT&T's spokeswoman said the company's billing is improving. "We have made progress toward a single bill, although there is still work that needs to be done," she said. AT&T has doubled the capacity of its network in the last two years under Mr. Ponder's guidance, the spokeswoman said. Ponder 'Uniquely Qualified' Mr. Walter described Mr. Ponder as "uniquely qualified" for the new planning assignment. He "will be an adviser to me," Mr. Walter told AT&T workers in the message.

Mr. Ianna, an electrical engineer, has held a number of jobs over his 25 years with AT&T, including sales and marketing, operations and the design and management of the AT&T network. Currently he is also AT&T's chief quality officer, a title he retains.

His new job will give Mr. Ianna a full plate. Even as he completes work on the new billing system, which has cost AT&T hundreds of millions of dollars, he must also implement a new program to expand the network. The latter project is expected to cost \$9 billion this year alone, AT&T said recently.

AT&T calculates 76 million customer bills a month, including the timing and tracking of calls and any discounts a customer would be due. It bills for eight million of its accounts directly. The remainder of the company's bills goes through the Bell companies, which also

do printing and mailing and for which they are paid hundreds of millions of dollars annually by AT&T.

For new wireless customers, AT&T has been offering bundled long-distance and wireless services. In the tiny pockets of the nation where AT&T has begun offering local services, AT&T is offering a bundled bill. And many AT&T business clients already get bundled bills. Eventually, the telecommunications giant plans to handle all of its own billing.

--- INDEX REFERENCES ---

COMPANY (TICKER): AT&T CORP. (T)

NEWS SUBJECT: Corporate Officers;
Management Issues; Personnel
Announcements; World Equity Index (COF
MNT PER WED)

MARKET SECTOR: Utilities (UTI)

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Providers; Telecommunications, All;
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